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International Covenant on Civil and Political Rights

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Human Rights Committee

# Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2348/2014*, **

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| *Communication submitted by:* | Nell Toussaint (represented by counsel, Andrew Dekany, and by Bruce Porter, of Social Rights Advocacy Centre) |
| *Alleged victim:* | The author |
| *State party:* | Canada |
| *Date of communication:* | 24 December 2013 (initial submission) |
| *Document references:* | Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 14 February 2014 (not issued in document form) |
| *Date of adoption of Views:* | 24 July 2018 |
| *Subject matter:* | Denial of access to health insurance and health care and its consequences for author's life and health |
| *Procedural issues:* | Victim status (*actio popularis*); abuse of submission — incompatibility with the Covenant; non-exhaustion of domestic remedies |
| *Substantive issues:* | Right to equal protection without distinction of any kind; right to an effective remedy; right to life; risk of ill-treatment; right to security of person; right to equality before the law |
| *Articles of the Covenant:* | 2 (1) and (3) (a), 6, 7, 9 (1) and 26 |
| *Articles of the Optional Protocol:* | 1, 2, 3 and 5 (2) (a) and (b) |

1. The author of the communication is Nell Toussaint, a national of Grenada born in 1969 who has lived in Canada since 1999. She claims to be a victim of violations by Canada of her rights under articles 2 (1) and (3) (a), 6, 7, 9 (1) and 26 of the Covenant. The

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval. Pursuant to rule 90, paragraph 1 (a), of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.

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Optional Protocol entered into force for Canada on 19 August 1976. The author is represented by counsel.

**The facts as submitted by the author**

2.1 On 11 December 1999, the author lawfully entered Canada as a visitor from Grenada. She worked in Canada from 1999 to 2008 without obtaining residency status or permission to work. However, some of her employers made deductions from her salary to cover federal and provincial taxes, Canada Pension Plan and Employment Insurance. During this period, she managed to pay privately for any medical costs.

2.2 Encouraged by an employer who wished to hire her permanently, the author began to seek regularization of her status in Canada in 2005. That year, she paid a significant part of her savings to an immigration consultant who turned out to be dishonest and provided no useful service. The author could not afford to make further attempts to regularize her status for some time.

2.3 In 2006, her health began to deteriorate as she developed chronic fatigue and abscesses. In November 2008, she became unable to work due to illness, and in 2009 her health deteriorated to life-threatening status. In February 2009, she was diagnosed with pulmonary embolism and suffered from poorly controlled diabetes with complications of renal dysfunction, proteinuria, retinopathy and peripheral neuropathy, according to Dr. Guyatt, a professor of clinical epidemiology and biostatistics at McMaster University. Her neurological problems resulted in severe functional disability with marked reduction in mobility and impairment of basic activities. She also suffered from hyperlipidaemia and hypertension.

2.4 In 2008, the author received free assistance from a qualified immigration consultant and made an application for permanent resident status on humanitarian and compassionate grounds to Citizenship and Immigration Canada.

2.5 In April 2009, the author was informed that she had qualified for provincial social assistance under the Ontario Works programme due to her pending application for permanent residence in Canada based on humanitarian and compassionate grounds. She was also deemed eligible for social assistance from the Ontario Disability Support Program, but neither of those programmes covered health care or the cost of fees for a humanitarian and compassionate application.

2.6 On 6 May 2009, she applied for health-care coverage under the Federal Government's programme of health care for immigrants, called the Interim Federal Health Benefit Program (IFHP),[1] established pursuant to a 1957 Order-in-Council.

2.7 On 10 July 2009, the author was denied health coverage under IFHP by an immigration officer as she did not fit into any of the four categories of immigrants eligible for IFHP coverage as set out in the Citizenship and Immigration Canada guidelines: refugee claimants, resettled refugees, persons detained under the Immigration and Refugee Protection Act and victims of trafficking in persons. The life-threatening nature of the author's health problems was not mentioned as a consideration.

2.8 The author sought judicial review before the Federal Court of Canada of the decision denying her health-care coverage under IFHP. She argued that the decision was in breach of her rights to life, to security of the person and to non-discrimination under sections 7 and 15, respectively, of the Canadian Charter of Rights and Freedoms and that the immigration officer had failed to apply domestic law in a manner consistent with the international human rights treaties ratified by Canada. The author also provided the Court with extensive medical evidence proving that her life had been put at risk.

2.9 During the Federal Court procedures, Dr. Guyatt provided expert evidence describing the author's medical situation and the implications for her health status of failure

[1] The Interim Federal Health Benefit Program was authorized to expend funds for medical or dental care, hospitalization or any incidental expenses for immigrants or anyone "subject to immigration jurisdiction or for whom the immigration authorities feel responsible" where the person lacks the resources to pay the costs of the medical care.

to provide appropriate medical treatment.[2] Similarly, Dr. Hwang[3] commented on the likely medical consequences should she be unable to obtain adequate health care from a hospital.[4]

2.10 The Federal Court found that the evidence established a deprivation of the author's right to life and security of the person that was caused by her exclusion from IFHP. However, the Court found that the deprivation of the rights to life and security of the person in the author's case was not contrary to section 7 of the Canadian Charter, that denying financial coverage for health care to persons who have chosen to enter or remain in Canada illegally is consistent with fundamental justice and that the impugned policy was a permissible means to discourage defiance of Canada's immigration laws.

2.11 The author then appealed to the Federal Court of Appeal, arguing that the Federal Court's decision was contrary to the right to life under article 6 of the Covenant and to protection from discrimination on the ground of immigration status under international human rights law.

2.12 The Federal Court of Appeal upheld the Federal Court's finding that the author "was exposed to a significant risk to her life and health, a risk significant enough to trigger a violation of her rights to life and security of the person". The Court held, however, that the "operative cause" of the risk to her life was her decision to remain in Canada without legal status and agreed with the lower court's finding that the deprivation of the right to life and security of the person in this case accorded with the principles of fundamental justice. The Federal Court of Appeal further held that discrimination on the grounds of immigration or citizenship status did not qualify for protection as an "analogous ground" of discrimination under the Canadian Charter. The Court also commented that in assessing whether the exclusion of immigrants without legal status from access to health care was justifiable as a reasonable limit under section 1 of the Canadian Charter, appropriate weight should be given to the interests of the State in defending its immigration laws. The Court held that while international human rights law could be considered in interpreting the Canadian Charter, it was not relevant in this case.

2.13 The author then sought leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada.[5] The application for leave to appeal was denied on 5 April 2012.[6]

2.14 Shortly afterwards, the Government of Canada repealed the 1957 Order-in-Council and replaced it with the Order Respecting the Interim Federal Health Program. The new policy in relation to access to IFHP does not, however, provide undocumented migrants with health-care coverage under the Program and makes no explicit exception for situations where life or health is at risk, except where there is a clear health risk to the public.

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[2] "The author has severe medical problems that markedly impair her quality of life, are likely to decrease her longevity, and could be life-threatening over the short term. She requires intensive medical management by highly skilled professionals, including medical subspecialists. Negotiating pro bono care by a number of such doctors is clearly extremely unsatisfactory and potentially dangerous. Delays resulting from lack of coverage and an inability to pay for the health care that she needs and the risk that she will not have access to necessary services create serious risk to her health and may have life-threatening consequences."

[3] A physician at St. Michael's Hospital and a professor in the Faculty of Medicine at the University of Toronto.

[4] "The [author] would be at extremely high risk of suffering severe health consequences if she does not receive health care in a timely fashion .... She has already suffered from serious and to some degree irreversible health consequences due to lack of access to appropriate care, [which has] resulted in inadequately treated, uncontrolled diabetes and hypertension. As documented in her medical records, her inability to afford medications in the past has also contributed to the poor control of her diabetes and hypertension. If she were to not receive timely and appropriate health care and medications in the future, she would be at very high risk of immediate death (due to recurrent blood clots and pulmonary embolism), severe medium-term complications (such as kidney failure and subsequent requirement for dialysis), and other long-term complications of poorly-controlled diabetes."

[5] A letter from the Office of the United Nations High Commissioner for Human Rights was attached to the application for leave to appeal, affirming the importance of the issues raised in relation to compliance by Canada with its international human rights treaty obligations.

[6] The Supreme Court of Canada grants leave to appeal only in exceptional circumstances and does not indicate the reasons for its negative decisions.

2.15 On 30 April 2013, the author became eligible for health-care coverage as a result of her application for permanent residence based on spousal sponsorship and a confirmation by Citizenship and Immigration Canada that she met the criteria for spousal sponsorship. Since then, the author was granted health-care coverage under the provincial Ontario Health Insurance Plan and has been receiving health care.

2.16 The author claims that she has exhausted all available and effective domestic remedies and that she has not submitted her communication to any other procedure of international investigation or settlement.

2.17 The remedy sought by the author is twofold. She requests the State party (a) to ensure that illegal immigrants have access to IFHP coverage for health care necessary for the protection of their rights to life and security of person; and (b) to provide her with compensation for the severe psychological distress, inhuman treatment and exposure to a risk to life and to long-term negative health consequences as a result of the violation of her rights.[7]

**The complaint**

3.1 The author claims that the State party violated its obligations under articles 2 (1) and (3) (a), 6, 7, 9 (1) and 26 of the Covenant by denying her access to health care necessary for the protection of her life and health from 10 July 2009 through 30 April 2013, on the basis of her irregular immigration status. She submits that she lacked the means to pay for the care herself.

3.2 The author submits that the exclusion from health-care coverage on the basis of her particular immigration status constitutes a violation of her rights under articles 2 (1) and 26 of the Covenant. The author asserts that the domestic courts' findings concerning the denial of health care on the basis of her immigration status is not an objective, proportionate or reasonable means of deterring illegal immigration. The author also submits that she did not migrate to Canada to secure health care; she decided to remain in Canada in order to work. She claims that excluding her from IFHP coverage on the basis of her immigration status constituted a discriminatory distinction and that her circumstances, particularly her life-threatening status, were not taken into consideration.

3.3 The author further claims that the denial of access to health care put her life at risk and constituted cruel and inhuman treatment, in violation of her rights under articles 6 and 7 of the Covenant. She underscores that the Federal Court and the Federal Court of Appeal agreed with the fact that her life and health had been placed at significant risk by the State party's denial of access to health-care coverage under IFHP and was thus, she claims, a violation of her rights to life and not to be subjected to cruel, inhuman or degrading treatment under articles 6 and 7, respectively.

3.4 The author also claims that the denial of such access caused her physical and mental suffering that may also constitute a violation of article 9 (1). In this regard, the author requests that the Committee, which has generally restricted the application of article 9 to issues relating to the administration of justice, extend the scope of the right to security of person under this article to also cover access to health care, with reference to the practice of the Canadian courts.

3.5 The author finally claims that the State party has violated article 2 (3) (a) of the Covenant by failing to provide effective remedies for the discrimination she experienced on the ground of her immigration status, as well as for the violation of her rights to life and to security of person. The author submits that the domestic courts should have interpreted and applied the relevant domestic law in accordance with the Covenant. She adds that she was denied an effective remedy as the domestic courts had failed to refer to expert evidence attesting to discriminatory stigmatization of undocumented migrants as a result of denying them access to health care.

[7] According to the affidavit of a doctor of internal medicine who testified in favour of the author before the Federal Court, it appears that she would suffer consequences from the past denial of access to health care.

**State party's observations on admissibility**

4.1 On 14 August 2014, the State party submitted its observations on admissibility, requesting separate consideration of admissibility from the merits.[8]

4.2 The State party submits that the author is not a victim of a violation according to articles 1 and 2 of the Optional Protocol, as she was ineligible to receive funding through the specialized IFHP and she has been the beneficiary of provincial health-care coverage since April 2013, after receiving a residence permit. The State party recalls the Committee's jurisprudence on *actio popularis*,[9] arguing that the author is not a representative of any victim claiming a violation among other potential undocumented migrants.

4.3 It asserts that the 1957 IFHP challenged by the author no longer exists, since it was replaced by the 2012 IFHP. Moreover, the 2012 IFHP was declared invalid on 4 July 2014 by the Federal Court for being inconsistent with sections 12 and 15 of the Canadian Charter. The Court held that the Program's provisions jeopardized the health of vulnerable individuals and failed to show that the denial of health-care coverage to those individuals was necessary to achieve any legitimate aim. The State party also claims that the author no longer has any need to obtain funding for medical care and that her medical needs have been addressed.

4.4 The State party also submits that the author has not exhausted available domestic remedies, as she failed to seek monetary compensation before domestic courts when she challenged the constitutionality of IFHP.

**Author's comments on the State party's observations on admissibility**

5.1 On 2 November 2014, the author submitted her comments on the State party's observations on admissibility.

5.2 She rejects the arguments that she does not qualify as a victim of the State party's policy of excluding undocumented migrants from IFHP coverage. She claims that her communication is not an *actio popularis*, as it does not address the effect of the impugned policy in general but pertains to its application in her case in particular. The author submits that she relies on the findings of the domestic courts and that, as a result of the denial of IFHP coverage, she suffered severe psychological stress and was exposed to a risk to her life, as well as to long-term, and potentially irreversible, negative health consequences.

5.3 The author also rejects the State party's assertions that her claim that she was excluded from IFHP coverage on the ground that she was an undocumented migrant has become moot because she is now receiving health care as a permanent resident. She argues that the provision of health-care coverage since 2013 has neither removed nor provided compensation for the effects of the psychological stress or long-term health consequences of the denial of health care she suffered as an undocumented migrant.

5.4 She also rejects the State party's assertions that her communication should be found moot because the 1957 IFHP was replaced by an amended system in 2012. The changes to IFHP modified some aspects of the eligibility of certain groups while continuing to deny coverage to undocumented migrants. The changes made by the State party have not remedied or mitigated in any way the exclusion of undocumented migrants from accessing the Program.

5.5 Regarding the exhaustion of domestic remedies, the author submits that there were no other effective domestic remedies available which would allow for seeking monetary compensation for the violation of her rights under the Covenant. She claims to have exhausted available remedies that would have resulted in monetary compensation for violations of the rights to life, security of the person and non-discrimination under the

[8] The State party's request was denied on 1 December 2014, as its inadmissibility arguments were not elaborate, compared to the author's detailed comments, and disregarded the author's health status.

[9] See, e.g., communications No. 318/1988, *E.P. et al. v. Colombia* (CCPR/C/39/D/318/1988), para. 8.2; and No. 1632/2007, *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.2.

Canadian Charter. The author admits that she did not initiate separate litigation under domestic law to seek only the monetary compensation.

**State party's observations on admissibility and the merits**

6.1 On 2 April 2015, the State party submitted its observations on admissibility and the merits.

6.2 Regarding admissibility, the State party reiterates its observations of 14 August 2014 that the communication should be declared inadmissible. Canada implemented a new policy ("2014 Policy") on 5 November 2014 to temporarily provide funded medical care to certain categories of foreign nationals with no legal status. The State party claims that the 2014 Policy allows the Minister of Health to grant a more comprehensive range of medical coverage "because of exceptional and compelling circumstances". As of the date of the submission, discretionary medical coverage had been applied to the situation of migrants with no legal status in Canada and granted in two such cases.

6.3 Regarding the merits, the State party considers the author's allegations with respect to articles 2, 6, 7 and 9 (1) as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol and rule 96 (d) of the Committee's rules of procedure.

6.4 Regarding article 2, the State party recalls the Committee's jurisprudence that the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a claim under the Optional Protocol.[10]

6.5 The State party recalls that article 6 provides a negative right, prohibiting laws or actions that cause arbitrary deprivations of life. The scope of the right to life cannot extend so far as to impose a positive obligation on States to provide an optimal level of State-funded medical insurance to undocumented migrants (inadmissibility *ratione materiae*).

6.6 The State party similarly argues that article 7 cannot be interpreted to impose a positive obligation to provide State funding for an optimal level of medical insurance.

6.7 The State party claims that the scope of article 9 (1) is generally limited to situations involving detention or other deprivations of liberty, although the Committee, in its general comment No. 35 (2014) on liberty and security of person, sought to expand its interpretation of the scope of the right to protection from "intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained".

6.8 Concerning the alleged violation of article 26 of the Covenant, the State party argues that health insurance coverage is provided to citizens and non-citizens, and to foreign nationals with a wide variety of immigration statuses. It also submits that the denial of health care was justified, as the author did not have legal residence. The State party further submits that legal residence is a neutral, objective requirement that cannot be considered as a prohibited ground of discrimination.

**Author's comments on the State party's observations on admissibility and the merits**

7.1 On 22 August 2015, the author submitted her comments on the State party's observations. She rejected the State party's argument that the Covenant does not impose positive obligations on States under articles 6, 7 and 9 (1) and that her claims are inadmissible *ratione materiae*. This argument is inconsistent with the Committee's general comment No. 6 (1982) on the right to life and its jurisprudence. She does not claim a right to health, but that specific rights under the Covenant have been violated in the context of access to health care through IFHP. The author also submits that the right to life, the prohibition of inhuman and degrading treatment or punishment, the right to security of person and the right to non-discrimination must be fully protected with respect to situations involving access to health care, including for irregular migrants.

7.2 The author also rejects the State party's argument that emergency and pro bono medical care were sufficient to protect her Covenant rights, recalling that the Federal Court

[10] See communications No. 1234/2003, *P.K. v. Canada* (CCPR/C/89/D/1234/2003), para. 7.6; and No. 1544/2007, *Hamida v. Canada* (CCPR/C/98/D/1544/2007), para. 7.3.

thoroughly reviewed the evidence with respect to access to emergency care and found that the author's life and long-term health had been placed at risk. Moreover, the State party's statement that irregular migrants are entitled to emergency care under provincial legislation is not true in all provinces and territories.

7.3 Regarding the State party's argument that immigration status is not a prohibited ground of discrimination under article 26, the author submits that irregular migrants face widespread discrimination, exclusion, exploitation and various abuses, and that depriving them of health care cannot be justified as a mean of encouraging compliance with immigration laws.

7.4 On 22 August 2015, the author submitted the legal opinions of International Network for Economic, Social and Cultural Rights (ESCR-Net) and Amnesty International Canada.

7.5 ESCR-Net submits that the narrow characterization by the State party of articles 6, 7 and 9 (1) is incorrect. The consideration of cases that involve situations of access to health care is not dependant on an explicit right to health, but should be undertaken with reference to all relevant human rights engaged. The right to life, the prohibition of inhuman and degrading treatment or punishment, the right to security of person and the right to non-discrimination must be fully protected with respect to situations involving access to necessary health care, especially in regard to the most vulnerable groups in society, including undocumented migrants. The Committee has affirmed on multiple occasions that access to health care falls under several rights of the Covenant and that such access must be respected and ensured without discrimination, including on the ground of immigration status.[11] ESCR-Net submits that in its 2015 concluding observations on Canada, the Committee called on Canada to "ensure that all refugee claimants and irregular migrants have access to essential health-care services irrespective of their status".[12] Similarly, in its 2014 concluding observations on the United States of America, the Committee called on the United States to "identify ways to facilitate access to adequate health care, including reproductive health care services, by undocumented immigrants ...."[13] ESCR-Net underscores that the European Court of Human Rights regularly considers health-related situations by reference to articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment) and 8 (rights to respect for private and family life, home and correspondence), underscoring positive obligations to ensure access to health care in order to protect various human rights, and the right to life in particular.[14]

7.6 ESCR-Net also submits that the obligations contained in the Covenant extend to all levels of government and that the State party must ensure that, where the Federal Government has assumed responsibility for providing necessary health care to migrants who are ineligible for provincial health care, the federal programme complies with the Covenant.

7.7 ESCR-Net further submits that immigration should be clearly recognized as a prohibited ground of discrimination, following the interpretation of the Committee on Economic, Social, and Cultural Rights.[15] Therefore, ESCR-Net considers that State policy or practice that imposes regularization of immigration status as a requirement for the protection of the right to life does not meet any standard of reasonableness under

[11] See, e.g., communication No. 1020/2001, *Cabal and Pasini Bertran v. Australia* (CCPR/C/78/D/1020/2002), para. 7.7. See also Human Rights Committee, concluding observations on the initial report of Zimbabwe (CCPR/C/79/Add.89), para. 7; and ibid., comments on the initial report of Nepal (CCPR/C/79/Add.42), para. 8.

[12] See Human Rights Committee, concluding observations on the sixth periodic report of Canada (CCPR/C/CAN/CO/6), para. 12.

[13] Ibid., concluding observations on the fourth periodic report of the United States of America (CCPR/C/USA/CO/4), para. 15.

[14] See European Court of Human Rights, *Vo v. France* (application No. 53924/00), judgment of 8 July 2004, paras. 88 and 89. See also European Court of Human Rights, *Gorgiev v. The former Yugoslav Republic of Macedonia* (application No. 49382/06), judgment of 19 April 2012, para. 43.

[15] See Committee on Economic, Social and Cultural Rights, "An evaluation of the obligation to take steps to 'maximum of available resources' under an optional protocol to the Covenant" (E/C.12/2007/1), paras. 7–8.

international human rights law. It submits that States parties ought to consider and apply policies and practices that represent a proportionate response to any legitimate aims that might exist with respect to compliance with immigration laws.

7.8 In its legal opinion Amnesty International Canada also argues for admissibility of the complaint. It notes that the author has exhausted domestic remedies as leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada was denied, leaving her with no further domestic recourse available. It recalls that it is only in the context of an absence of specific claimants who can be individually identified as having had their rights violated that a communication amounts to an *actio popularis*, and therefore inadmissible under article 1 of the Optional Protocol.

7.9 On the merits, Amnesty International Canada submits that the denial of access to necessary health care to irregular migrants amounts to unlawful discrimination, considering that the exclusion of irregular migrants from IFHP constitutes unequal treatment which is not based on reasonable and objective criteria and therefore cannot be justified. It underscores that the Supreme Court of Canada has already found that Canada had a positive obligation under section 15 of the Canadian Charter. In the case of *Eldrige v. British Columbia*, the Court stated that "the principle that non-discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field".[16] Regarding the alleged violation of the author's right to life, Amnesty International Canada requests the Committee to recognize that the obligations of Canada under the Covenant require it to take positive measures to protect the right to life. It recalls that the Committee's jurisprudence has established that, although the Covenant does not contain a self-standing "right to health", article 6 engages issues of access to health care.[17] It also recalls that the Committee has found that restricting "access to all basic and life-saving services such as food, health, electricity, water and sanitation" is inconsistent with the right to life under article 6.[18]

**State party's additional observations**

8.1 On 30 March 2016, the State party reiterates, as stated in its observations of 14 August 2014 and 2 April 2015, that the communication should be declared inadmissible.

8.2 Responding to the author's comments on emergency care under provincial legislation, the State party recalls that the administration and delivery of health-care services is the responsibility of each provincial or territorial government, guided by the Canada Health Act. It recalls that provinces and territories fund these services through public health-insurance programmes, with assistance from the Federal Government in the form of fiscal transfers. The State party argues that health-care services include insured primary health care and care in hospitals, and that the provinces and territories also provide some groups with supplementary health benefits not covered by the Health Act such as prescription medicine coverage.

8.3 The State party submits that public health care is administered and funded in Ontario through the Ontario Health Insurance Program. It recalls that the author inquired about her coverage under this programme in June 2009 but was told she did not qualify under the Ontario Health Insurance Act as she was not lawfully a resident of Ontario at the time. Under the Health Insurance Act, individuals must have a citizenship or immigration status that renders them eligible for publicly funded health care. The State party notes that many such types of residents are recognized, including permanent residents, eligible applicants for permanent residency, protected persons and persons with valid work permits issued under the Immigration and Refugee Protection Act. The State party submits that foreign nationals without legal status in Canada are not eligible for publicly funded health care.

[16] See Supreme Court of Canada, *Eldrige v. British Columbia* (Attorney General), judgment of 9 October 1997, para. 78.

[17] See *Cabal and Pasini Bertran v. Australia*, para. 7.7.

[18] See Human Rights Committee, concluding observations on the fourth periodic report of Israel (CCPR/C/ISR/CO/4), para. 12.

8.4 The State party also claims that the author did not seek a formal decision regarding her eligibility for the Ontario Health Insurance Program nor seek judicial review of the Province's response. The State party also considers that she has failed to challenge the constitutionality of the Ontario Health Insurance Program regime in Canadian courts. It notes that in Canada's federal system, the province has the responsibility to determine eligibility for publicly funded health care and it is thus against this level of government that the author should have sought a domestic remedy.

8.5 The State party recalls that the author has been a permanent resident of Canada since 2013 and has received comprehensive public health insurance sufficient to meet all her medical needs. The State party notes that the regularization of her status in Canada has provided her with comprehensive and publicly funded health care. It recalls that the Committee recognized in *Dranichnikov v. Australia*[19] that the granting of a civil status sufficient to provide the author with protection (such as a protection visa) rendered the claim moot and inadmissible on that basis.

8.6 The State party, recalling the Committee's decision in *A.P.L.-v.d.M. v. Netherlands*,[20] that the author "cannot, at the time of submitting the complaint, claim to be a victim of a violation of the Covenant", notes that the author began to receive publicly funded health care on 30 April 2013, eight months before she filed her communication with the Committee on 24 December 2013. The State party therefore states that the communication is inadmissible under article 1 of the Optional Protocol.

8.7 The State party maintains that the communication is an *actio popularis* and is therefore inadmissible. The State party recalls that the author, in addition to her individual claim, sought to "ensure that individuals residing in Canada with irregular immigration or citizenship status have access to IFHP coverage for health care". The State party notes that this part of the claim thus relates not to the author but to other undocumented migrants who may seek access to IFHP to fund their health-care needs. The State party therefore underscores that such an allegation lies outside the scope of the Optional Protocol and that the Committee has consistently recognized that "to the extent [an] author argues that [a] scheme as a whole is in breach of the Covenant, [the] claim amounts to an *actio popularis* reaching beyond the circumstances of the author's own case".[21]

8.8 The State party states that the alleged violations under articles 6, 7 and 9 (1) of the Covenant, including the denial of publicly funded primary health care, failed to fall within the scope of the Covenant. The State party, noting the Committee's views on the right to publicly funded primary or preventive health care, states that "deprivation of life involves a deliberate or otherwise foreseeable and preventable infliction of life-terminating harm or injury that goes beyond mere damage to health, of which the author would be at risk if she did not receive 'timely and appropriate health care and medication'". The State party submits that the author was provided with sufficient publicly funded emergency and essential health care available to everyone, regardless of civil status or residency. The State party also submits that the availability of emergency and essential health care fulfils its obligations related to the protection of life under article 6 (1) of the Covenant.

8.9 The State party also states that it has not sought to prevent the author from obtaining health-care services at community health centres[22] or elsewhere on a pro bono basis. It recalls that the Federal Court of Appeal noted that the author had access to medical assistance at these centres after her medical needs surpassed her ability to pay.

8.10 The State party maintains that the interpretation of the right to life cannot extend so far as to impose a positive obligation on States to provide an optimal level of State-funded medical insurance to undocumented migrants. In this regard, the State party relies on the Committee's decision in *Linder v. Finland* that the "right to health, as such, is not protected

[19] See communication No. 1291/2004, *Dranichnikov v. Australia* (CCPR/C/88/D/1291/2004), para. 6.3.

[20] See communication No. 478/1991, *A.P.L.-v.d.M. v. Netherlands* (CCPR/C/48/D/478/1991), para. 6.3.

[21] See communication No. 958/2000, *Jazairi v. Canada* (CCPR/C/82/D/958/2000), para. 7.6; see also communication No. 1114/2002, *Kavanagh v. Ireland* (CCPR/C/76/D/1114/2002), para. 4.3.

[22] The community health centres are non-profit organizations that provide primary health and health-promotion programmes to individuals in the community.

by the provisions of the Covenant".[23] The State party therefore states that the Covenant does not create an obligation to fund primary or preventive health care.

8.11 As regards the alleged violation under article 26, the State party submits that, in allocating public health-care funding, it may reasonably differentiate between those with lawful status in the country (whether citizens, permanent residents, asylum seekers or immigrants, inter alia) and foreign nationals who have not been lawfully admitted to Canada. The State party recalls the Committee's views that a "differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26".[24] Relying on the case *Oulajin and Kaiss*,[25] the State argues that its requirement that foreign nationals be lawfully present in Canada before accessing publicly funded primary health care is both an objective and a reasonable criterion in respect of the principles of non-discrimination and equality before the law found in article 26 of the Covenant.

8.12 Regarding the merits, the State party recalls that the author received publicly funded emergency health-care services and was not prevented from obtaining primary health care from various community organizations, on a pro bono basis, or on the basis of private health insurance.

8.13 The State party concludes that there has been no violation of articles 2 (1) and (3) (a), 6, 7, 9 (1) or 26 of the Covenant and requests the Committee to declare the author's request for financial compensation inadmissible.

**Author's comments on the State party's additional observations**

9.1 On 26 July 2016, the author submitted comments on the State party's additional observations. She objects to the argument that she should have pursued remedies with provincial governments in Canada for her complaint against the Federal Government to be admissible. She submits that she challenged the Federal Government's denial of health care under IFHP and that this denial, as found by the Federal Court, violated her right to life by subjecting her to significant threats to her life and negative long-term health consequences. The author further submits that the exhaustion of domestic remedies requirement in federal States should be applied in a manner consistent with the Committee's observation at paragraph 4 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.[26]

9.2 The author submits that she has solicited the opinion of a group of leading experts in the field of constitutional and health law in Canada.[27] These experts are of the opinion that the author reasonably sought a remedy against the Federal Government, rather than a province, for failure to provide her with health-care coverage for emergency and essential health care.

9.3 The author rejects the State party's observation that her communication is moot, as in the case of *Dranichnikov v. Australia*. The author recalls that in that case, the author alleged that her rights under article 6, 7 and 9 of the Covenant would be violated if she were to be deported to the Russian Federation. The author notes that, having been granted a protection visa, the Committee found the allegations related to the threat of deportation to be moot, such that there were no longer any threats of deportation. In the present case, the

[23] See communication No. 1420/2005, *Linder v. Finland* (CCPR/C/85/D/1420/2005), para. 4.3.

[24] See communication No. 180/1984, *Danning v. Netherlands* (CCPR/C/29/D/180/1984), para. 13.

[25] See communications Nos. 406/1990 and 426/1990, *Oulajin and Kaiss v. Netherlands* (CCPR/C/46/D/406/1990 and 426/1990), para. 7.3.

[26] In general comment No. 31, the Committee reminded States parties with a federal structure of the terms of article 50, according to which the Covenant's provisions "shall extend to all parts of federal States without any limitations or exceptions".

[27] The opinion is attached to the communication. As of 3 June 2016, it had been signed by: Prof. Y.Y. Brandon Chen; Prof. Martha Jackman, Faculty of Law, University of Ottawa; Prof. Angela Cameron, PhD, Faculty of Law, University of Ottawa; Prof. Jennifer Koshan, Faculty of Law, University of Calgary; Prof. Bruce Ryder, Osgoode Hall Law School, York University; Prof. Margot Young, Allard School of Law, University of British Columbia; Prof. Catherine Dauvergne, Allard School of Law, University of British Columbia; Prof. Sharry Aiken, Faculty of Law, Queen's University; and Prof. Constance McIntosh, Schulich School of Law, Dalhousie University.

author alleges that she was denied access to health care necessary for the protection of her life and long-term health, not that she is under threat of such denial. The author submits, however, that her allegation is analogous to the elements of the communication in *Dranichnikov v. Australia*, which the Committee found to be admissible. Although in *Dranichnikov* the author was no longer subject to the procedures before the refugee tribunal and her family had been granted a permanent protection visa, the author had been subject to those procedures in the past and the allegation with respect to tribunal procedures was found to be admissible. In the present case, the author notes that, similarly, the allegation that her rights under the Covenant were violated in the past is not rendered moot by the fact that changes in her circumstances mean that the impugned policy is no longer applicable to her.

9.4 With regard to the State party's comments on the case *A.P.L.-v.d.M. v. Netherlands*, the author recalls that the Committee's decision relied on the particular fact of the case, in which an impugned restriction on benefits had been abolished, with retroactive effect. In the present case, the author notes that the exclusion of undocumented migrants from access to health care has not been abolished and the violation of her rights under the Covenant has not been remedied.

9.5 The author also rejects the State party's observation that her submission amounts to an *actio popularis*. The author recalls that the Committee held, in the case *Jazairi v. Canada*, that an "individual must be personally and directly affected by the violations claimed" and that the allegations with respect to the "scheme as a whole" reached "beyond the circumstances of the author's own case".[28] In the present case, the author maintains that she challenges her exclusion from IFHP, which personally and directly affects her. The author also submits that the discretion provided to the Minister of Health to grant access to the Program for individuals without lawful status in Canada was not in effect at the time she was denied. The author further submits that the State party has not indicated that the discretion is exercised according to any criterion related to the protection of life and long-term health. Furthermore, the author notes that the two cases in which discretion has been granted suggest that rare exceptions have been made based on particular immigration circumstances rather than on the basis of the need for health care under article 6 of the Covenant.

9.6 The author further rejects the State party's observation that her submission is not compatible with articles 6, 7 and 9 of the Covenant. The author maintains that she does not argue that the Covenant includes "a right to publicly funded and primary health care" but alleges a deprivation of her right to life which, in her circumstances, required access to a programme that provided coverage of emergency and essential health care. The author thus submits that the main question regarding the State party's compliance with article 6 which the State party does not address is the finding of the domestic courts that a violation of the right to life is not arbitrary because it was justified as a measure to promote compliance with immigration law.

9.7 As to the State party's comments on the alleged violation of article 26, the author notes that in the case *Danning v. Netherlands*,[29] the differentiation at issue was with respect to differential insurance rates for married and unmarried individuals, which the Committee found to be based on reasonable and objective criteria. The author finds that such distinction is not analogous to a refusal of emergency and essential health care on the basis of immigration status, both because the right to life and personal security are at stake and because the ground of the distinction at issue in the present case is recognized as a basis for widespread discrimination and stigmatization in many countries. Although the State party, relying on the case *Oulajin and Kaiss v. Netherlands*, argues that such a differentiation is not intended to stigmatize, the author submits that the distinction at issue in that case,

[28] See *Jazairi v. Canada*, para. 7.6.

[29] See communication No. 180/1984, *Danning v. Netherlands* (CCPR/C/29/D/180/1984), paras. 12.4–12.5.

between foster children and biological children, was entirely different from the nature of the distinction drawn in the present case.[30]

9.8 Finally, the author rejects the State party's observations on the merits. With respect to the comments made by the State party on the publicly funded emergency health-care services, the author notes that she was living in destitution at the time she applied for coverage under IFHP and had no possibility of paying for health care. In response to the State party's observation that she received publicly funded emergency health services, the author argues that the Federal Court found that she had been denied health care necessary for the protection of her life and long-term health, and that she was also billed for health care she had received from emergency departments because she did not have IFHP coverage. The author also refers to her attempt to have her application for permanent residency reviewed on humanitarian and compassionate grounds, a review that was prolonged by the refusal of the Minister of Health to consider the author's request that fees which she could not afford to pay be waived.[31]

**Issues and proceedings before the Committee**

*Consideration of admissibility*

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

10.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee notes the State party's objection to the admissibility of the communication on the ground that the author sought, by way of an *actio popularis*, to challenge the law in order to ensure that individuals residing in Canada with irregular immigration or citizenship status have access to IFHP health-care coverage and that the author is not a victim of a violation of articles 1 and 2 of the Optional Protocol, as she has been a beneficiary of provincial health-care coverage since April 2013. In this regard, the Committee recalls its jurisprudence according to which "a person may claim to be a victim under article 1 of the Optional Protocol only if his or her rights are effectively violated. The concrete application of this condition is a question of degree. However, no person can in the abstract, by way of *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant."[32]

10.4 The Committee notes, however, the author's submission that her communication indicates how the policy was applied to her as an individual and how it personally and directly affected her from 2006 to 2013, as demonstrated by the findings of the domestic courts, including in regard to the admitted consequences that were harmful for her health (see para. 2.9). In the light of its jurisprudence, the Committee considers that, due to her exclusion from IFHP between 2006 and 2013 and the consequences thereof, the author may claim to be a victim of the alleged violation of her rights under the Covenant within the meaning of article 1 of the Optional Protocol.[33]

10.5 The Committee also notes the State party's objections to the admissibility of the communication on the grounds that the author's communication is moot since the health scheme challenged by the author no longer exists, having been modified in 2012 and in 2014, and that the regularization of the author's status in Canada allowed her to benefit

[30] In that case, the Committee found no violation of article 26 and noted that "the Child Benefit Act makes no distinction between Dutch nationals and non-nationals, such as migrant workers" (para. 7.5).

[31] The Minister agreed to consider her request only when ordered to do so by the Federal Court of Appeal.

[32] See communication No. 35/1978, *Aumeeruddy-Cziffra et al. v. Mauritius* (CCPR/C/12/D/35/1978), para. 9.2.

[33] See, e.g., communications No. 1024/2001, *Sanlés v. Spain* (CCPR/C/80/D/1024/2001), para. 6.2; No. 318/1988, *E.P. et al. v. Colombia* (CCPR/C/39/D/318/1988), para. 8.2; and No. 1632/2007 *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.2. See also *Jazairi v. Canada*, para. 7.6.

from full public health care from 2013 onwards. The Committee further notes, however, that neither the changes made to the federal programme in 2014 nor the regularization of the author's status could retroactively remedy the harm she actually suffered between 2006 and 2013 due to the denial of her access to health care appropriate to her medical condition.[34] Accordingly, the Committee considers that this part of the communication is admissible pursuant to article 3 of the Optional Protocol.

10.6 The Committee notes the State party's contention that the communication should be declared inadmissible because the author has not exhausted available domestic remedies as required by article 5 (2) (b) of the Optional Protocol. The Committee recalls its jurisprudence according to which the author must exhaust, for the purpose of article 5 (2) (b) of the Optional Protocol, all judicial or administrative remedies that offer him or her a reasonable prospect of redress.[35] The Committee takes note of the State party's objection that the author has failed to seek monetary compensation before domestic courts when she challenged the constitutionality of IFHP. The author has, however, explained that she had exhausted domestic remedies for violation of her rights under the Canadian Charter of Rights and Freedoms. She argues that under section 24 (1) of the Canadian Charter, courts may grant remedies to individuals for infringement of Charter rights which include, in certain circumstances, monetary compensation. The Committee notes the author's assertion that since the Federal Court of Appeal found that the Charter had not been breached, she had no prospect of success for any claims of monetary compensation. It also notes the author's submission that the courts would have had broad discretion to award appropriate and just remedies, including compensation, if the Federal Court or the Federal Court of Appeal had upheld her allegations.

10.7 The Committee also notes the State party's contention that the administration and provision of health-care services is the responsibility of the government of each province or territory and that the author should have requested remedies from the Province of Ontario. The State party also points out that the author could have challenged the constitutionality of the Ontario health insurance scheme. At the same time, the Committee notes the State party's explanation (see para. 8.3.) that the author did not meet the conditions set out in the Ontario Health Insurance Act because she was not a legal resident of Ontario and therefore could not benefit from the provincial programme. The Committee also notes the author's arguments and the opinion of the "group of leading experts" composed of nine Canadian law professors who believe that it was reasonable for the author to seek a remedy at the federal and not at the provincial level. The Committee notes in particular: (a) that while responsibility for health care may be shared between the provincial and the federal levels of government, federal institutions are responsible for the delivery of health care for certain categories of the population, including some categories of foreigners in an irregular situation; (b) that federal institutions are responsible for health care for immigrants in detention, rejected asylum seekers awaiting renewal of their immigration status at the border and expelled persons whose status renewal has been suspended due to the conditions of detention or insecurity prevailing in their country; and (c) that provincial legislation explicitly excludes from its jurisdiction all persons who do not have a right to lawfully reside in Canada and that such exclusion is confirmed by consistent jurisprudence of Canadian courts. As a result, remedies at the provincial level would have protracted the procedure unnecessarily, whereas the author was looking for an emergency solution. The State party does not explain how such remedies could have been effective in the author's case. Consequently, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

10.8 Furthermore, the Committee notes the State party's assertion that the author's allegations of a violation of articles 2 (1) and (3) (a), 6, 7 and 9 (1) should be found incompatible with the Covenant under article 3 of the Optional Protocol.

10.9 Concerning article 6, the Committee notes the State party's argument that the right to life cannot be interpreted as far as to impose on States a positive obligation to provide undocumented migrants with an optimal level of health insurance. The Committee recalls

[34] See *Dranichnikov v. Australia*, para. 6.3; and *A.P.L.-v.d.M. v. Netherlands*, para. 6.3.

[35] See communication No. 437/1990, *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

its jurisprudence according to which the right to health, as such, is not protected by the provisions of the Covenant.[36] However, the author has explained that she does not claim a violation of the right to health but of her right to life, arguing that the State party failed to fulfil its positive obligation to protect her right to life which, in her particular circumstances, required provision of emergency and essential health care (see para. 9.7) Accordingly, the Committee declares the claims under article 6 admissible.

10.10 The Committee takes note of the claims of the author under articles 7 and 9 (1) and considers that the author did not provide sufficient information to explain how the denial of access to health care could have exposed her to cruel, inhuman or degrading treatment or could have undermined her enjoyment of rights under article 9 (1) of the Covenant. Consequently, the Committee considers that these claims have not been sufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

10.11 Concerning the author's claims under article 26, the Committee notes that the State party has not contested the admissibility of these claims, arguing instead that the Government justified its decision to deny health-care coverage to undocumented migrants on the basis of the desire to encourage compliance with federal immigration laws. The Committee notes that the Federal Government has not denied that it could have provided the author with necessary health care by permitting her, as an undocumented migrant with a need for urgent medical assistance, to receive coverage for essential health care under IFHP. Consequently, the part of the complaint referring to article 26 is declared admissible in accordance with article 2 of the Optional Protocol.

10.12 Recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol as they can be invoked only in conjunction with other substantive articles of the Covenant,[37] the Committee considers the author's claims under article 2 (1) and (3) (a) to be inadmissible under article 3 of the Optional Protocol.

10.13 Accordingly, the Committee declares the author's claims under articles 6 and 26 to be admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

11.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

11.2 Concerning the alleged violation of article 6, the Committee takes note of the author's claims that (a) the denial of her access to health care put her life and health at risk, as she could not receive medical treatment corresponding to the seriousness of her health problems; (b) her already critical health status deteriorated to life-threatening status in 2009; and (c) the Federal Court and the Federal Court of Appeal agreed that her life and health had been put at significant risk by the State party's denial of access to health-care coverage under IFHP. In that context, the Committee notes that the author resided in Canada for a period of time, worked there from 1999 to 2008 and sought to regularize her status in 2005.

11.3 The Committee recalls that in its general comment No. 6, it noted that the right to life had been too often narrowly interpreted and that it could not properly be understood in a restrictive manner, and that the protection of the right required that States adopt positive measures. The Committee considers that the right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Furthermore, the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not

[36] See *Linder v. Finland*, para. 4.3.

[37] See, e.g., communications No. 2343/2014, *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; No. 2202/2012, *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; No. 2195/2012, *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; No. 1887/2009, *Peirano Basso v. Uruguay* (CCPR/C/99/D/1887/2009), para. 9.4; and No. 1834/2008, *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

result in loss of life. In particular, as a minimum, States parties have the obligation to provide access to existing health-care services that are reasonably available and accessible when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life.

11.4 The Committee notes the State party's observations that the author was able to receive publicly funded medical care through access to hospital emergency care and was not prevented from obtaining primary health care from various community organizations, on a pro bono basis or on the basis of private health insurance. Due to the provision of such health care, the State party considers that it has fulfilled its obligations relative to the protection of the author's right to life under article 6 (1) of the Covenant. The Committee notes, however, that both the Federal Court and the Federal Court of Appeal acknowledged that, despite the care she may have received, the author had been exposed to a serious threat to her life and health because she had been excluded from the benefits of IFHP. The Committee also notes the medical opinions submitted to this effect in the Federal Court proceedings (see para. 2.9).

11.5 In the light of the serious implications of the denial of IFHP health-care coverage to the author under the Program from July 2009 to April 2013, as evidenced in her communication and reviewed in detail by the Federal Courts, the Committee concludes that the facts before it disclose a violation of the author's rights under article 6.

11.6 The Committee notes the author's claim under article 26 that excluding her from IFHP coverage on the basis of her immigration status is not an objective, proportionate or reasonable means of deterring illegal immigration, in particular as her life-threatening health conditions were not taken into account. The Committee also notes the State party's submission that in allocating public health-care funding, it may reasonably differentiate between those with legal status in the country, including immigrants, and foreign nationals who have not been lawfully admitted to Canada and that legal residence is a neutral, objective requirement that cannot be considered as a prohibited ground of discrimination.

11.7 The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which it reaffirmed that article 26 entitled all persons to equality before the law and equal protection of the law, prohibited any discrimination under the law and guaranteed to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (para. 1). While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations and prohibits discrimination in law or in fact in any field regulated and protected by public authorities. The Committee also recalls that in its general comment No. 15 (1986) on the position of aliens under the Covenant, it stated that the general rule was that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. While the Covenant does not recognize the right of aliens to enter and reside in the territory of a State party, the Committee also stated that aliens had an "inherent right to life". States therefore cannot make a distinction, for the purposes of respecting and protecting the right to life, between regular and irregular migrants.[38] More generally, the Committee also recalls that not every differentiation based on the grounds listed in article 26 amounts to discrimination, as long as it is based on reasonable and objective criteria,[39] in pursuit of an aim that is legitimate under the Covenant.[40]

11.8 The Committee considers that in the particular circumstances of the case where, as alleged by the author, recognized by the domestic courts and not contested by the State party, the exclusion of the author from the care under IFHP could result in the author's loss of life or irreversible, negative consequences for the author's health, the distinction drawn by the State party for the purpose of admission to the Programme between those with legal

[38] See also Inter-American Court of Human Rights, *Juridical conditions and rights of undocumented migrants*, advisory opinion AO-18/03 of 17 September 2003.

[39] See, e.g., communications No. 172/1984, *Broeks v. Netherlands* (CCPR/C/29/D/172/1984), para. 13; and No. 182/1984, *Zwaan-de Vries v. Netherlands* (CCPR/C/29/D/182/1984), para. 13.

[40] See, e.g., communication No. 1314/2004, *O'Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3.

status in the country and those who had not been fully admitted to Canada was not based on a reasonable and objective criterion and therefore constituted discrimination under article 26.

12. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations by the State party of articles 6 and 26.

13. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obliged, inter alia, to take appropriate steps to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations in the future, including reviewing its national legislation to ensure that irregular migrants have access to essential health care to prevent a reasonably foreseeable risk that can result in loss of life.

14. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.